



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TAMWORTH EDUCATION ASSOCIATION  
NEA-NEW HAMPSHIRE

Complainant

v.

TAMWORTH SCHOOL BOARD

Respondent

CASE NO. T-0309:4

DECISION NO. 96-053

#### APPEARANCES

##### Representing Tamworth Education Assn.:

Theodore Wells, UniServ Director

##### Representing Tamworth School Board:

Jay C. Boynton, Esq.

##### Also appearing:

Margaret DeLong, NEA-New Hampshire

John DeLong, NEA-New Hampshire

Nathan Hughes, Tamworth School District

#### BACKGROUND

The Tamworth Education Association, NEA-New Hampshire (Association) filed a Petition for Modification on April 10, 1996 seeking to include educational support personnel in the existing bargaining unit of professional personnel represented by the Tamworth Education Association. The Tamworth School Board (Board) filed its Answer and Objection on April 23, 1996. This matter was then set for hearing on May 23, 1996 after which a continuance was sought and granted to the Board. This matter was then scheduled and heard by the PELRB on June 18, 1996. In the meantime, the parties reached a preliminary agreement, filed with

the PELRB on June 14, 1996, which stipulated that (1) the District did not oppose the formation of a separate, versus a merged, bargaining unit for the petitioned-for employees and (2) the only remaining positions in dispute were the head cook and head custodian positions about which the parties agreed to present evidence during the June 18, 1996 hearing.

#### FINDINGS OF FACT

1. The Tamworth School Board is a "public employer" of teachers, professional personnel, educational support personnel and others within the meaning of RSA 273-A:1 X.
2. On April 10, 1996 the Tamworth Education Association, the certified bargaining agent for teachers and professional personnel employed by the Board, petitioned for 16 education support personnel positions to be added to the teachers' bargaining unit, to wit, aides, tutors, kitchen workers, custodians, secretaries and administrative assistants. By stipulation entered at the commencement of the PELRB hearing on June 18, 1996 the parties agreed: (1) to establish a separate bargaining unit for the petitioned for employees, (2) to exclude the Administrative Assistant therefrom, and (3) to present evidence only on the inclusion or exclusion of the head cook and head custodian, the only two positions still contested by them.
3. Head Cook Margaret DeLong is one of two kitchen employees, the other being the assistant cook. She has participated in interviews for other cooks; however, when asked her opinion about applicants, her opinion has been followed once and rejected once. She has no authority to hire, fire or discipline or any history of doing same. Compared to the assistant cook, she deals with vendors, is responsible for federal forms compliance, does banking and makes equipment requests of management. She prepares the kitchen budget, orders food and determines how much food to prepare. She has been queried about a raise for the assistant cook for school year 1996-1997; however, this duty of recommending or evaluating is not included in her job description (Assn. Exhibit No. 1). Notwithstanding this, she was asked to and did perform

an evaluation of the assistant cook on 5/4/95 and 11/2/95. (Board Exhibit No. 1). Her job description consists of eleven (11) performance responsibilities which are:

1. Plans the meals for the students using government supplies as available.
  2. Works in harmony with the assistant cook to prepare and serve the hot lunch meals to the students.
  3. Is pleasant to the students and the staff as related to public relationships and presentation of the food.
  4. Completes all forms as needed to [k]eep the hot lunch program in compliance with State and Federal laws.
  5. Completes all necessary monthly forms so as to ensure proper payment so suppliers.
  6. Works with groups that might be in need of the kitchen to ensure the careful use of the equipment.
  7. Keeps the principal up-dated on any events related to the smooth running of the hot lunch program.
  8. Completes inventories and routine checks of the equipment so as to avoid any problems that would harm the performance of the program.
  9. Creates any program that will encourage students to have the lunch program.
  10. Participates in workshops that will enhance the performance of the coo[k]s.
  11. Participates in staff meetings so as to feel a part of the staff community.
4. The job description for the assistant cook (Assn. Exhibit No. 2) provides that she "reports to" the head cook. The lines of responsibility and supervision are no more closely drawn than this. The assistant cook is supposed to "work in harmony" with the head cook. Performance responsibility, No. 2. The job descriptions for each position require the ability to lift 50 pounds of supplies and to be able to walk or stand for 5 to 6 hours.
5. Head Custodian John DeLong is one of two custodial

employees, the other being the assistant custodian. He and the assistant work complementary shifts in order to offer on-premises coverage from 6:00 a.m. to 10:00 p.m. The head custodian assists in preparing the janitorial budget, keeps, orders and inventories supplies, deals with vendors and reports to the principal. There is no evidence that he has authority to hire, fire or discipline other employees or has done so. He has been queried about a raise for the assistant custodian for the 1996-97 school year; however, the duty of recommending or evaluating is not included in his job description. (Assn. Exhibit No. 4). Notwithstanding this, he was asked to and did perform and evaluation on the assistant custodian on 6/6/94 and 12/20/95. (Board Exhibit No. 3). His job description consists of twenty-six (26) performance responsibilities which are:

1. Remains on the school premises during normal working hours except as required by the job, and during non school hours when his/her attendance is required by the principal.
2. Neatly maintains all necessary records required for administrative purposes.
3. Complies with all state, federal, and local laws for fire regulations, safety regulations, storage and disposal of trash, rubbish and waste.
4. Assists and aids in preparing and administering the custodian services budget.
5. Keeps an inventory of supplies and equipment for custodial usage and requisitions such needed replacement from the principal far enough in advance so that they may be delivered in such time as will not hinder the custodian in his/her duties.
6. Reports immediately to the principal any damage to school property.
7. Insures safe economical usage of fuels, water and electricity.
8. Regulates heat and ventilation systems to provide temperatures appropriate to the season and in compliance with current heating and ventilation policies.
9. Inspects and maintains fire alarm system and fire extinguishes on a regularly scheduled bases.

10. Conducts periodic inspections and tests all electrical installations in the facility to ensure their proper and safe condition.
11. Conducts an ongoing program of general maintenance, upkeep and repair.
12. Maintains on a regular schedule all motors and other mechanical/electrical equipment requiring scheduled preventative maintenance servicing.
13. Maintains proper snow removal and sands adequately walks, steps and entrances as appropriate.
14. Makes such minor building repairs as he/she is capable of.
15. Reports major and/or emergency repairs to the principal.
16. Keeps the building and premises, including sidewalks, driveways, and play areas neat and clean at all times.
17. Checks daily to ensure that all exit doors are open and all panic bolts are working properly during the hours of building occupancy and the exit doors are properly secured during the hours the building is unoccupied with the proper "night" lights in operation.
18. Sweeps classrooms daily, dusts furniture daily, and cleans corridors after school each day.
19. Properly cleans and disinfects tile floors daily and cleans all sanitary fixtures and drinking fountains daily.
20. Cleans all chalkboards at least once a week.
21. Keeps all floors and corridors in a clean and attractive condition and in a good state of preservation, with a regularly scheduled preventative maintenance schedule.
22. Washes all windows on both the inside and outside at least twice each year, and more frequently if necessary.
23. Keeps the grounds free from rubbish, performs such yard keeping chores as grass cutting and the like, as necessary to maintain the school grounds in a safe and attractive condition.
24. Moves furniture and/or equipment within the building as required for various activities and as directed by the principal.
25. Keeps principal informed of all unusual as

- well as routine happenings in the school.
26. Maintains all state required certifications.

#### DECISION AND ORDER

We ratify and confirm the establishment of a second bargaining unit as agreed by the parties. It shall consist of the positions of aides, tutors, kitchen workers, custodians and secretaries. The administrative assistant is excluded. We next address whether the supervisory exemption claimed by the Board under RSA 273-A:8 II applies to the head cook and head custodian positions.

Under RSA 273-A:8 II, "persons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise." After examining the evidence and hearing the testimony, we can find no "significant exercise of discretion" by the head cook over the assistant cook or by the head custodian over the assistant custodian.

The job description for the head cook requires her to "work in harmony" with the assistant cook. The job description of the assistant cook requires her to "work in harmony" with the head cook. This state of affairs appears to us to be a matter of reciprocity rather than a supervisor-supervisee relationship. Likewise, their lifting and standing requirements are identical as is their work place. For all intents and purposes, the eight performance responsibilities found in the assistant cook's job description are embodied in the eleven performance responsibilities of the head cook. They both, essentially, do the same job with more responsibilities on the head cook to ensure payment to suppliers, ensuring careful use of the equipment by outsiders, i.e., non-employees, and coordinating with the principal. For these extra responsibilities, the head cook receives higher or extra compensation; she does not utilize "significant exercise of discretion" over the assistant cook in so doing and, accordingly, shall not be excluded from the bargaining unit under RSA 273-A:8 II.

The head custodian and the assistant custodian have identical lifting and standing job requirements in their respective job descriptions. The thirteen performance responsibilities of the assistant custodian are embodied in performance responsibilities numbered 1, 3, 6, 7, 8, 13, 14, 15, 16, 17, 18, 19 and 20 of the head custodian. As was the case with the cooks, they both do the same work. The head custodian, as was the case with the head cook, receives higher or extra

compensation for added responsibilities. These added responsibilities do not involve "significant exercise of discretion" over the assistant custodian. Particularly convincing to us was the fact that the head custodian, and assistant custodian work complementary or reciprocal shifts so that building coverage may be had between 6:00 a.m. and 10:00 p.m. Thus, while they may have contact in the workplace, there is no direct or on-going supervisory relationship during the workday. Time does not permit it. Testimony in the record established that building deficiencies or complaints brought to or discovered by the assistant custodian would be passed on to the head custodian, and vice versa. Here, we have two positions performing the same job, with one job getting a higher stipend for additional duties...none of which involve the "significant exercise of discretion" over the assistant custodian. There is no cause to exclude the head custodian from the bargaining unit under RSA 273-A:8 II.

The bargaining unit shall be as set forth in the first paragraph hereof, inclusive of the head cook and head custodian.

So ordered.

Signed this 11th day of July, 1996.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.  
Members Richard Roulx and E. Vincent Hall present and voting.